1941

File No. B. Small Holders Relief 141

Legal **DEPARTMENT**

B. **BRANCH**

Subject:— Governor's Bill No VII of 1941

A Bill to amend the B'Gang Small Holders Relief Act 1938

P17

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C O N T E N T S

Legal Department File No. ~~Exx~~ D Small Holders relief /41

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Two draft Bills, one amending the Bombay Tenancy Act, 1939, and the other amending the Bomaby Small Holders Relief Act, 1938 are appended.

2. Clause 2 of the first draft Bill provides for an amendement of section 1 of the Bombay Tenancy Act, 1939 empowering Government to extend any or all the provisions of the Act and to bring them into force insuch areas as it thinks fit. Clause 3 of the Bill provides for an amendment of section 29 providing that on the date on which the provisions of section 2 to 13 of the Act come into force in any area section 9 of the Bombay Small Holders Relief Act will be repealed in such area.

3. The second draft Bill provides for the extension of the Bombay Small Holders Relief Act, 1938 for another year. Clause 5 of the Bill Provides for a suitable amendemnt of section 9 of the Act which refers to tenants. The other provisions of the Act have no relations to the Bombay Tenancy Act and the question whether they should be continued in force or not depends on the decision relating to the bringing into force of the Bombay Agricultural Debtors Relief Act, 1939. It does not appear, however that the Bombay Agricultural Debtors Relief Act will be soon brought into force in the whole of the Province. It will, therefore, be necessary to continue in force these provisions. The Bill, therefore, provides for continuance of these provisions for one year more and clauses 3 and 4 provide for a suitable amendment of sections 3 and 4 of the Act.

4. Under executive instructions both the Bill require previous approval of the Governor General before enactment.

5. The first Bill to amend the Bombay Tenancy Act, 1939, does not require to be reserved for the consideration of the Governor General .

6. The subject matter of the second Bill to amend the Bombay Small Holders Relief Act, 1938, would fall under entry No. 21 in List II and entry No. 4 in List III in the Seventh Schedule to the Government of India Act, 1935. As sections 3, 4, 6, 7, 9 and 1 of the Bombay Small Holders Relief Act, 1938, are repugnant to the provisions of the existing Indian laws contained in the Code of Civil Procedure, 1908, and the Indian Limitation Act, 1908, and as the Bill is intended to extend the life of the Act for one more year, the Bill will have to be reserved for the consideration of the Governor General with reference to paragraph (2) of the Proclamation and section 107(2) of the Governmentof India Act, 1935.

Sd. J. R. DHURANDHAR,

Remembrancer of Legal Affairs.

U.R. to R.D, No 11037, dated the 16th December 1940

Mr/25/4

A draft Bill to amend the Bombay Tenancy Act, 1939, is appended. Clause 2 empowers Government to extend any or all the provisions of the Act and to bring them into force in such area as it thinks fit. Section 4(2) provides that a person deemed to be a protected tenant shall be entitled to recover possession of the land if the land has been leased by the landlord for a period expiring after the 31st day of May 1940 from the date on which such lease expires and in ogher cases from the 1st day of June 1940. As these dates will now be incompatiable with the Act as proposed to be amended, which will be enforced in different districts at different times clause 3 of the Bill substitutes for "31st May 1940 and 1st June 1940" respectively "31st May 1940 and 1st June immediately following the date of the coming into force of that section in the area in which the land is situated. Similarly the date 31st March 1939 in secton 5(2)(a) has been changed by clause 4 of the Bill to 31st March of the year immediately preceding the year in which that section comes into force in the area in which the land is situated. Clause 5 and 6 of the Bill make suitable amendments in sections 19 and 23 by substituting "situated in any area in which that section comes into force, made after the coming into force of that section insuch area" for the words "made after the coming into force of this Act". Clause 7 provides for an amendment of section29 to the effect that on the date on which the provision of sections 2 to 13 come into force in any area section 9 of the Bombay Small Holders Relief Act, 1938 will be repealed in such area.

2. A draft Bill to amend the Bombay Small Holders Relief Act, 1938 is also appended. It provides for the extension of the Act for another year. Clause 5 makes a suitable amendment of section 9 which refers to tenants as it does not appear that the Bombay Agricultural Debtors Relief Act will soon be brought into force in the whole of the Province. It isnecessary to continue in force the otherprovisions of the Act and clauses. 3 and 4 provide for a suitable amendment of sections 3 and 4 of the Act. Clause 6 makes an amendment of section 11 to provideFor revival of right etc. on the expiry of certain provisions of the Act instead of on the expiry of the whole of the Act as a t presentprovided in that section.

3. As the Bills are important the Advocate General is re uested kindly to scrutinise them and state whether they are in order.

Sd. J.R. Dhurandhar,

Remembrancer of Legal Affairs.

U. R. to Adv. General, dated 20-12-1940

Mr/25/4

I have scrutinised the frafts of the t o Bills and I think that they are in order.

I have made an alteration in section 6 of the Bill to amend the Bombay Small Holders Relief Act, 1938 (at p. 73) by substituting the word "such" instead of the word "the" in the last but oneline of the section.

Sd./ M.C./ Setalvad,
Advocate General.
7-1-1941

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Office of the R.L.A.

Two revised draft of the Bills are appended.

2. Paragraph 3 of the Revenue Department note at page 57 ante- The amendment in sub-section (2) of section 1 is made from the drafting point of view. It is desirable that any provisions of the Act should extend only to the areas in which they are to be brought into force. Under the amended sub-sections (2) and (3), notifications can be issued simultaneously providing for extension and bringing into force any provisions of the Act in any area.

3. Paragra h 5 of the Revenue Department note.- The necessary draft amendments to sections 4 and 5 of the Bomba, Tenancy Act are appended. See new clauses 3 and 4 It appears necessary to amend sections 19 and 23 of the Act also as in the appended draft clauses 5 and 6.

4. Paragraph 7 of the Revenue Department note.- The words "Second Amendment" were used in cluse 1 of the Bill because the Act was being amended for the second time in the year 1940 in which in whic this Bill was expected to be enacted. The words had no reference to the number of times that Act was amended since its enactment in 1938. As the Bill will now be enacted into an Act in 1941 for the brackets, words and figures "(Second Amendment) Act, 1940" the brckets, words and figures "(Amendment) Act, 1941" have been substituted in clause 1 of the revised draft Bill

5. Pregraph 8 of the Revenue Department note.- As regards amendment of section 84 of the Bombay Agricultural Debtors Relief Act attention is requested to the Bill sent with the Remembrancer of Legal Affair's U.O.R. No.11232 dated 23rd December 1940. Caluse 6 of the revised draft Bill to amend the Bombay Small Holders Relief Act, 1938

Makes an amendment of section 11 providing for revival of rights etc. on the expiry of certain provisions of the Act instead of on the expiry of the whole of the Act as at present provided in the section.

6. The draft Bills were shown to the Advocate General and have been approved by him.

Sd. J.R. Dhurandhar,

Remembrancer of Legal Affairs.

U.R. to H.D. No. 185, dated the 8th January 1941

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Legal Department

As stated in paragraph 4 of the A.L.A.'s opinion No. 11037, dated the 16th December 1940, at p . 39 ante, the two Bills require previous approval of the Governor General before enactment under executive instructions. A copy of the Memo. from the Secretary to Governor under which such previous approval is necessary is sent herewith. Item (ii) (a) in L.D.,G.R., No 432.L- dated the 23rd August 1937 referred to in the Revenue Department note relates to the previous sanction of the Governor General under the Government of India Act, 1935. No such sanction is necessary for these Bills. For obtaining the previous approval of the Government General to the two Bills the Revenue Department should refer the papers to the Secretary to the Governor. After the intimation from the Secretary to the Governor that the Governor General has given his previous approval is received the papers may be referred to this Department for further action, with 20 copies of each of the two Bills four printed on blue paper and 16 printed on white papers.

Sd/- P.N. Moos,

Secretary to Government

U.R. to R.D., No 75-Confl., dated the 13th February 1941

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IMMEDIATE

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No. 2420

Legal Department,
Bombay Castle, 18th March 1941

From

P.N. Koos, Esquire, I.C.S.
Secretary to the Government of Bombay

To,

The Secretary to the Governor of Bombay

Subject:- A Bill to amend the Bombay Small Holders Relief Act, 1938.

Sir,

With reference to your Memorandum No. 201(29), dated 10th March 1941, addressed to the Revenue Department, I am directed to forward herewith a copy of the Bill to amend the Bombay Small Holders Relief Act, 1938, prepared by His Excellency the Governor under paragraph 2 of the Proclamation dated 4th November 1939 issued by him under section 93 of the Government of India Act, 1935.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act 1935, or falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. By Bombay Act V of 1940, the operation of the Bombay Small Holers Relief Act, 1938, was extended up to 31st March 1941. Bombay Act V of 1940 was reserved for the consideration of the Governor General under section 75 of the Government of India Act, 1935. By your letter No 201 (13), dated 28th March 1940 the assent of the Governor General to that Act was communicated to this Department. The present Bill purports to extend the operation of the Bombay Small Holders Relief Act, 1938, for a period of one year more, i.e. until 31st March 1942.

4. The subject-matter of the Bill would fallunder entry No. 21 in List II and entry No 4 in List III in the Seventh

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Schedule to the Government of India Act, 1935, As sections 3, 4,6,7,9 and 11 of the Bombay Small Holders Relief Act, 1938 are repugnant to the provisions of the existing Indian laws contained in the Code of Civil Procedure, 1908 and the Indian Limitation Act, 1908 and as the Bill is intended to extend the life of the Act for one more year, the Bill will have to be reserved for the consideration of the Governor General with reference to paragraph (2) of the Proclamation and section 107(2) of the Government of India Act, 1935

5. I also forward herwith six spare copies of the Bill, out of which five copies are for transmission to the Secretary to the Governor General (Public).

6. It is requested that His Excellency the Governor General may be moved to give his assent to the Bill before 31st March 1941 and to convey the assent by telegram as the old Act expires on that day. And/ the new Act must come into force on that date.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-
18/3/

Secretary to the Government of Bombay,
Legal Department.

Through

The Secretary to the Government of Bombay,
Revenue Department.

Mr/26/4

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Acts.

Publication of the Bombay Small Holders Relief (Amendment) Act, 1941

GOVERNMENT OF BOMBAY
Legal Department.
Resolution No. 2875
Bombay Castle, 19th March 1941

Letter to the Secretary to the Governor, No 2420, dated the 18th March 1941.

Letter from the Secretary to the Governor, No. 201 (29) dated the 27th March 1941.

"With reference to your letter No. 2420, dated the 18th March 1941, I am directed to state that intimation has been received from the Secretary to the Governor-General Government (Public) that the Governor-General assented to the Bombay Small Holders Relief (Amendment) Bill, 1941 on the 26th March 1941."

RESOLUTION. The Law should bepublished as Bombay Act No. VIII of 1941, in the Bombay Government Gazette dated the 29th March 1941

2. The Act should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagar scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the Memorandum from that Department dated the 15th March 1941

By order of the Governor of Bombay

Sd/-
P.H. Hood,
Secretary to Government.

For.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department),
The Revenue Department,
* The Oriental Translator to Government, (With a
The Secretary to the Bombay Legislative Council, (copy of
The Secretary to the Bombay Legislative Assembly. (Act.

* With five extra copies

Mr/26/4

No. 201(29)
Office of the Governor's Secretary
Government House,

Bombay, 29th March 1941

From:

J.B. Irvin, Esquire, D.S.O., M.C., I.C.S.,
Secretary to the Governor of Bombay

To.

The Secretary to Government,
Legal Department, Bombay.

Subject :- Bombay Small Holders Relief (Amendment) Bill, 1941

Sir,

In continuation of my letter No 201(29), dated the 27th March 1941, I am directed to forward herwith the authentic copy of the Bill to amend the Bombay Small Holders Relief Act, 1938, with His Excellency the Governor-General's assent signified thereon.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-

for Secretary to the Governor of Bombay.

Hr/25/4

Notification

Revenue Department.

Bombay Castle, March 1941

No. .- In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is hereby pleased to directed th t the Bombay Small Holders Relief (Amendment) Act, 1941 (Bom VIII of 1941) shall apply to the partially excluded areas in the Province of Bombay.

By order of the Governor of Bombay,

Secretary to Government.

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